

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2004-351-T – Order No. 2005-110

MARCH 9, 2005

IN RE: Application of Adams Investments, Inc. d/b/a Adams Moving & Storage, 1525 Airport Road, Sumter, SC 29153 (Mailing address: Post Office Box 1881, Sumter, SC 29150) for a Class E Certificate of Public Convenience and Necessity.) ORDER GRANTING) CLASS “E” MOTOR) CARRIER) CERTIFICATE OF) PUBLIC) CONVENIENCE AND) NECESSITY
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I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Application of Adams Investments, Inc. d/b/a Adams Moving & Storage (“Adams” or the “Company”) for a Class E Certificate of Public Convenience and Necessity to transport household goods, as defined in 26 S.C. Code Ann. Reg. 103-210(1) (Supp. 2004), over irregular routes between points and places in South Carolina.

A Notice of Filing regarding Adams’ Application was prepared, and the Commission’s Docketing Department instructed the Company to publish the prepared Notice of Filing in newspapers of general circulation in the affected areas. Adams complied with the Docketing Department’s instructions by timely publishing the Notice of Filing and thereafter filing affidavits of publication attesting to publication as directed by the Docketing Department.

The Notice of Filing established January 24, 2005, as the date by which interested persons or entities could timely file petitions to intervene or present their views in writing with the Commission. No petitions to intervene or protests were filed with the Commission.

The Commission conducted a formal hearing in this matter on March 3, 2005, at 2:30 p.m. in the hearing room of the Commission, with the Honorable Randy Mitchell, presiding. David Popowski, Esquire, represented Adams. Benjamin P. Mustian, Esquire, and Shannon B. Hudson, Esquire, appeared on behalf of the Office of Regulatory Staff (“ORS”).

In support of its Application, Adams presented testimony from its President, Al Adams. Adams also presented direct testimony of David Petty, Marshall McMickell, Sarah Burnett, and Keith Fairchild who served as the Company’s shipper witnesses. ORS presented the testimony of L. George Parker, Jr., of that agency’s Transportation Department.

II. APPLICABLE LAW

1. S.C. Code Ann. § 58-23-20 (Supp. 2004) states, in pertinent part,

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

2. S.C. Code Ann. § 58-23-40 (1976) states,

No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the provisions of Article 3 of this chapter, a certificate and paid the license fee required by Article 5.

3. S.C. Code Ann. § 58-23-590(A) (Supp. 2004) states,

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

4. S.C. Code Ann. § 58-23-590(C) (Supp. 2004) states,

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the commission that:

- (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulations; and
- (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirements of public convenience and necessity. The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

5. Following enactment of S.C. Code Ann. § 58-23-590, the Commission proposed amendments and changes to the Commission's regulations governing motor carriers. The amended regulations became effective in June 1998.

6. 26 S.C. Code Ann. Reg. 103-102(1) (Supp. 2004) defines the term “Certificate of PC&N” as,

the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

7. 26 S.C. Code Ann. Reg. 103-102(5) (Supp. 2004) defines the term “Common Carrier by Motor Vehicle” as,

any person¹ which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976.

8. 26 S.C. Code Ann. Reg. 103-114 (Supp. 2004) defines the term “Class ‘E’ Motor Carrier” as,

a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission.

9. 26 S.C. Code Ann. Reg. 103-133(1) (Supp. 2004) sets forth the burden of proof that an applicant must meet before the Commission will grant the applicant a Class

¹ 26 S.C. Code Ann. Reg. 103-102(15) defines the term person as “any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof.”

E Certificate. The burden of proof placed upon the applicant seeking a Class E Certificate is as follows:

- (1) An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing and able to appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses. If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:
 - a. FIT. The applicant must demonstrate or the Commission determine that the applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.D.P.S. safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina, and agree to operate in compliance with these statutes and regulations.
 - b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating

that he is aware of the Commission's insurance requirements and the costs associated therewith.

- c. WILLING. Having met the requirements as to 'fit and able,' the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

10. 26 S.C. Code Ann. Reg. 103-134 (Supp. 2004) states,

When an application for a Certificate of PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether the public convenience and necessity are already being served.

III. EVIDENCE OF RECORD

The Company presented the testimony of its President, Al Adams. Mr. Adams testified that he has worked in the moving business since 1981 and that he is a third-generation mover. Prior to founding Adams Moving & Storage, Mr. Adams worked with Advantage Relocation, AllState Moving, and Nielson Van & Storage. Mr. Adams noted that he has driven trucks, worked in storage warehouses, and has performed almost every job that is connected with the moving industry. Mr. Adams stated that he is the President-Elect of the South Carolina Movers Conference and on the Board of the South Carolina Tariff Bureau.

Further, Mr. Adams testified that he has seven employees and one contracted employee, as well as a warehouse manager. Mr. Adams stated that he has two packers and a helper. Further, Mr. Adams stated his intent to hire seven more employees this year and more in future years if granted the authority he has requested.

Mr. Adams furnished a Certificate of Insurance and described his equipment. Mr. Adams' wife, Amanda, will work for the Company in billing and customer service.

David Petty of M.B. Kahn testified as a shipper witness. Mr. Petty makes arrangements to move employees to different areas of South Carolina, particularly from the upper part of the State to the lower part of the State, and to the Midlands. He stated that in a year period, there have been between six and twelve moves of this nature. Mr. Petty noted that there is definitely a need for another mover in South Carolina, in that he could not always obtain a mover when he needed one for M.B. Kahn's employees.

Sarah Burnett of Columbia testified that Mr. Adams provided a truck and driver at no cost to send hurricane relief to Florida at one time.

Keith Fairchild of Fairchild & Associates Real Estate also testified. Mr. Fairchild stated that he was particularly familiar with the Richland, Lexington, Calhoun, Kershaw, and Fairfield Counties' areas. Mr. Fairchild stated that, particularly between February and October, another mover is needed in these areas, because one is not readily obtainable.

Finally, Marshall McMickell of the U.S. Air Force testified. Mr. McMickell is the Traffic Manager for Shaw Air Force Base. Mr. McMickell stated that Shaw has some 350 shipments a year, of which about one-third are out of state. The remainder of the shipments are within the State of South Carolina. The goods in question often come in for temporary storage before being shipped to the owner's household. Mr. McMickell stated that there is a need for another intrastate mover of household goods in order to keep up

with the demand of the numerous shipments that are shipped by Air Force personnel within South Carolina.

L. George Parker, Jr. of the Transportation Department of the Office of Regulatory Staff also testified. Mr. Parker inspected the Company's facilities and did not detect any deficiencies. Mr. Parker testified that the Company's vehicles were well maintained, and the warehouse was clean. Parker stated that he believed that Adams was fit, willing, and able to perform the intrastate movement of household goods.

IV. FINDINGS OF FACT

After carefully considering the Application, the evidence of record, including the testimony and exhibits presented in this docket, and the applicable law, the Commission makes the following findings of fact:

1. Adams is a domestic corporation organized and existing under the laws of the State of South Carolina.
2. Adams is a full-service van line and seeks a Class E Certificate of Public Convenience and Necessity to transport household goods, as defined in 26 S.C. Code Ann. Reg. 103-210(1) (Supp. 2004), over irregular routes between points and places in South Carolina.
3. Adams is fit, willing, and able to provide and properly perform the services which it seeks to provide. Adams has demonstrated its "Fitness" by (i) testimony indicating that there are no outstanding judgments pending against the Company, and (ii) that it will operate in compliance with all statutes and regulations, including safety operations, pertaining to for-hire motor carrier operations. Further, the

record contains certification that Adams, through its President, is familiar with the regulations and statutes governing for-hire motor carrier services.

4. Adams has demonstrated that it is “Able” to provide for-hire motor carrier services by demonstrating that it has the necessary trucks and equipment with which to perform moving services and has the insurance which meets the minimum requirements set by the Commission. The evidence of record also indicates that Adams possesses sufficient financial resources necessary to conduct for-hire motor carrier operations in South Carolina.

5. By filing an Application for a Class E Certificate of Public Convenience and Necessity to transport household goods, as defined in 26 S.C. Code Ann. Reg. 103-210(1) (Supp. 2004), over irregular routes between points and places in South Carolina, and through the testimony provided by Mr. Adams, the Company has demonstrated its “Willingness” to undertake this business venture in South Carolina.

6. The services proposed by Adams are required by the public convenience and necessity. We find that the witnesses and exhibits presented on behalf of the Company establish that the public convenience and necessity warrant the issuance of the permit requested. Moreover, we find the evidence of public convenience and necessity provided by the Company to be credible.

V. CONCLUSIONS OF LAW

Based upon the foregoing, Applicable Law, Evidence of Record, and Findings of Fact, the Commission concludes, as a matter of law, the following:

1. The Commission concludes that Adams has demonstrated that it meets the requirement of fit, willing, and able as set forth in 26 S.C. Code Ann. Reg. 103-133 (Supp. 2004).

2. The Commission concludes that Adams has sufficiently demonstrated that the public convenience and necessity requires its proposed services as reflected in its application. Based upon the conclusions above that Adams has demonstrated that it meets the requirements of fit, willing, and able and that it has demonstrated that the public convenience and necessity require the services its proposes, the Commission concludes that a Class E Certificate of Public Convenience should be granted and that Adams should be authorized to transport household goods, as defined in 26 S.C. Code Ann. Reg. 103-210(1) (Supp. 2004), over irregular routes between points and places in South Carolina. This grant of authority, however, is contingent upon compliance with all Commission regulations as outlined below.

VI. ORDER

NOW THEREFORE, based upon the foregoing Applicable Law, Evidence of Record, Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED THAT:**

1. The Application of Adams for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved by the Commission.

2. Adams shall file with the Office of Regulatory Staff the proper insurance, safety rating, and other information required by S.C. Code Ann. Section 58-23-10 (1976) *et seq.*, as amended, and by 26 S.C. Code Ann. Reg. 103-100 through 103-241 of the Commission's Rules and Regulations for Motor Carriers, as amended, and 23A S.C.

Code Ann. Reg. 38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10 (1976) *et seq.*, as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended, a Class E Certificate of Public Convenience and Necessity shall be issued by the Office of Regulatory Staff authorizing the motor carrier services granted herein.

4. Prior to compliance with the above-referenced requirements and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

5. Failure on the part of Adams either (1) to complete the certification process by complying with the Commission's requirements of causing to be filed with the Office of Regulatory Staff proof of appropriate insurance and an acceptable safety rating within sixty (60) days of the date of this Order or (2) to request and obtain from the Commission additional time to comply with the requirements of the Commission as stated above, shall result in the authorization approved in the Order being revoked.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice Chairman

(SEAL)